

Amendments to the Federal Rules of Appellate Procedure Take Effect December 1, 2002

A number of amendments to the Federal Rules of Appellate Procedure (FRAP) will take effect on December 1, 2002. Please check the Court's website at www.ca2.uscourts.gov for a complete review of all the changes. The most significant revisions affecting Second Circuit practice are outlined below.

FRAP 4 Appeal as of Right

4(a)(1)(C) Time for Filing a Notice of Appeal

This is a new section which provides that appeals from an order either granting or denying a writ of *coram nobis* will be treated as a **civil** appeal thereby requiring that a notice of appeal be filed within 30 days (60 days where the government is a party).

4(a)(5) Extension of Time to File a Notice of Appeal

A motion for an extension for extra time to file a notice of appeal can be filed before the expiration of the original deadline to file or may be filed within 30 days after the original deadline, as long as the party demonstrates good cause or excusable neglect.

4(b) Appeals in Criminal Cases

The filing of a motion in district court under Federal Rule of Criminal Procedure 35(a) does not suspend the time for filing a notice of appeal from a judgment of conviction. The revision makes clear that the time to appeal continues to run even if a motion to correct a sentence under Rule 35 has been filed. If the district court corrects a sentence as a result of a Rule 35 motion, the time to appeal will begin to run from entry of the corrected judgment.

FRAP 5 Appeal by Permission

5(c) Form of Papers; Number of Copies

This amendment imposes a **20 page limit**, exclusive of the disclosure statement, proof of service, and the accompanying documents required by FRAP 5 (b)(1)(E), on petitions and cross petitions to appeal, and answers to those petitions and cross petitions.

FRAP 21 Writs of Mandamus and Prohibition, and Other Extraordinary Writs

21(d) Form of Papers; Number of Copies

This amendment imposes a **30 page limit on a petition for mandamus, prohibition or other extraordinary writs, and any answer to such a petition.**

FRAP 25 Filing and Service

25(c) Manner of Service

In courts where a local rule provides for electronic service on parties, this revision in FRAP will permit parties to serve other parties who have consented to service by electronic means. The Second Circuit does not have a local rule permitting such service, but litigants can obviously take advantage of such a rule in any other circuit court where local rules permit such service.

FRAP 26 Computing and Extending Time

26(a) Computing Time

With this revision, computing time under FRAP now conforms with computation practices under the Civil and Criminal Rules. **Intermediate Saturdays, Sundays and legal holidays will not be counted if the time permitted to act is less than 11 days, unless the period is specifically stated in calendar days. Deadlines of 11 days or more will include intermediate Saturdays, Sundays and legal holidays.**

FRAP 26.1 Disclosure Statement

26.1 (a) This amendment requires a non-governmental corporate party who has no parent corporations and at least 10% of stock not owned by any publically held corporation to inform the court of this fact.

26.1 (b) Parties are now required to file supplemental disclosure statements whenever there is a change in the information required to be disclosed after the original statement has been filed.

26.1 ©) An original + 3 copies of the supplemental statement must be filed.

FRAP 27 Motions

27(a)(3)(A) Response

This amends the time for filing a response to a motion. **Parties must now respond within 8 days after service, as calculated under FRAP 26(a), see *supra*.** Because the time period in which to act is less than 11 days, the term is 8 business days (intervening weekend days and holidays are not counted). Three calendar days are added if service was not by hand. *See* FRAP 26(c).

27(a) (4) Reply to a Response

The time for filing a reply to a response has also been shortened to 5 days. (Remember: because the time limit is less than 11 days, do not include in the count an intervening Saturday, Sunday, or legal holiday).

27(d)(1)(B)

Motions do not require a cover page, but if a cover page is included, it must be **WHITE**.

FRAP 28 Briefs

28(j) Citation to Supplemental Authorities

Legal argument is now permitted in 28(j) letters, although the revised rule now places a limit of 350 words on the text of the letter, including footnotes.

FRAP 31 Serving and Filing Briefs

31(b) This rule makes clear that **briefs must be served on each unrepresented party**, in addition to counsel for each represented party.

FRAP 32 Form of Brief, Appendices and Other Papers

32(a)(2) Cover

Supplemental briefs should have a **TAN cover**.

32(a)(7)(C) Length

This rule encourages (but does not require) litigants to use the new Form 6 as a way to comply with the Certificate of Compliance requirement.

32(c)(2)(A) Form of Other Papers

Should a party elect to include a cover page which is not required, the cover must be **WHITE**. (Examples of elective cover pages include petitions for panel or in banc rehearing).

32(d) Signature

This provision requires that every brief, motion, or other paper filed with the court be signed by the attorney or unrepresented party who files it. Only the original copy of every paper must be signed. An appendix filed with the court does not have to be signed at all.

FRAP 44 Case Involving a Constitutional Question When the United States or the Relevant State is Not a Party

44 (b) Constitutional Challenge to State Statute

Counsel or an unrepresented party is required to notify the court if there has been a constitutional challenge to any statute of a State, if that State or its representative is not a party. The clerk is responsible for certifying that fact to that state's attorney general. (The former rule imposed

such a requirement only when a federal statute was the subject of a constitutional challenge).

FRAP 45 Clerk's Duties

45(c) The clerk may now use electronic means (email and facsimile) to serve notice of entry of an order or judgment on parties who have consented, in writing, to such service.